



## *OCPF Online*

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*Office of Campaign and Political Finance  
One Ashburton Place, Room 411  
Boston, MA 02108*

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### Advisory Opinion

November 13, 2002  
AO-02- 36

Diana O'Donoghue, Esq.  
Massachusetts Association of Realtors  
258 Second Avenue  
Waltham, MA 02451

Re: Political Solicitations on Dues Invoices

Dear Ms. O'Donoghue:

This letter is in response to your request for an advisory opinion as to whether the Massachusetts Association of Realtors ("MAR") and the state and federal Realtors Political Action Committees ("Mass RPAC" and "RPAC," respectively) may solicit and receive PAC contributions in conjunction with MAR's annual dues billing.

MAR members belong to affiliated real estate associations on local, state and national levels. Dues for all three tiers are paid by members annually to one of the state's sixteen local associations. That entity retains its one-third share, and a third each is forwarded to the state and national associations. You have indicated that the local associations vary in size, and some are financed in part by corporate members.

Mass RPAC presently solicits contributions for the state and federal PACs using literature that explains to MAR members that, unless otherwise specified, their donation will be apportioned between the state and federal PACs, respectively, on a 70/30 basis. The written disclaimer on Mass RPAC mailings to MAR members states:

Contributions are not deductible for State and Federal income tax purposes. Contributions to RPAC are voluntary and are used for political purposes. You may refuse to contribute without affecting your membership rights. 70% of each contribution is used by MASS RPAC to support state and local candidates. The balance is sent to National RPAC to support Federal candidates and is charged against your limits under 2 U.S.C. 441a. State regulations limit contributions to \$500

maximum per individual to MASS RPAC in any calendar year. Under both Federal and State Law only personal contributions (checks not drawn from corporate accounts) can be for RPAC.<sup>1</sup>

In accordance with previous guidance from OCPF, Mass RPAC deposits the funds received pursuant to its solicitations into a separate transmittal account used solely to allocate and distribute the appropriate amounts to the state and federal committees.

MAR and Mass RPAC would like to incorporate a similar political solicitation with the associations' annual dues billing in order to give members the option of using a single personal check to pay dues and contribute to the PACs. You have asked whether the campaign finance law would allow this type of invoicing and payment.

#### QUESTION

May MAR members provide a single check to their local association in response to a dues bill that contains a political solicitation?

#### ANSWER

Yes. Where the source, form and amounts are otherwise consistent with the campaign finance law, PAC contributions and MAR dues may be paid together on a single check if the local association accepting the check has first established a separate transmittal account to receive such payments. From there, the dues receipts and political contributions would be dispensed to the appropriate association(s) and the PACs, with the PACs' portion going directly to the existing transmittal account for state and federal allocation.

#### DISCUSSION

There is nothing in the campaign finance law to preclude political contributions from being solicited from MAR members in conjunction with the associations' annual dues billing. To comply with the law and avoid the appearance of impropriety, there must be a clear statement on the invoices notifying members that voluntary political contributions to the associations' state and federal PACs, on a 70/30 basis, are being solicited in addition to their dues.

Local MAR associations, as agents of Mass RPAC, may collect the political contributions from members as long as the associations provide the PAC's treasurer with records and detailed accounts of the contributions within three business days of the receipt of the contributions. See M.G.L. c. 55, § 23. The records that must be maintained by the local MAR associations and transmitted to Mass RPAC must include the name and residential address of all contributors, the date and amount of each contribution, and, where the amount received from any one contributor has exceeded \$200 during the calendar year, the occupation and employer of contributor. See M.G.L. c. 55, §§ 2 & 10, and 970 CMR 1.10.

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<sup>1</sup> This disclaimer appeared on two of three sample Mass PAC solicitations that you provided to OCPF along with your request for an opinion. The third sample contained substantially similar language with only a minor variation. All three solicitations also make it clear that any \$1,000 contributions received will be allocated equally between the state and federal PACS.

MAR members may use a single personal check to pay their dues and contribute to the PAC where the member has, either in the memo portion of the check or in a separate document submitted with the check, clearly indicated the amount intended for the PAC. See AO-95-27 (advising that a single check could be used to contribute to affiliated PACs). Of course, as with all state or local PAC contributions, such contributions must not exceed, in the aggregate, \$500 annually from any one individual, and must not be drawn on an account containing corporate funds. See M.G.L. c. 55, §§ 7A and 8. In fact, pursuant to M.G.L. c. 55, § 9, PAC contributions from any member that exceed \$50, including any previous contributions made by that member during the year, must be paid by personal check or other “written instrument,” or, in the case of individual contributions to PACs, by direct deposit in accordance with § 9A.<sup>2</sup>

It is important in the joint solicitation of membership dues and PAC contributions that the local MAR associations do not function as political committees by inappropriately receiving the PAC contributions into their treasuries. As explained in OCPF’s Interpretive Bulletin IB-88-01, an association which solicits or receives any money or other thing of value for political purposes is deemed to be functioning as a political committee and is therefore subject to the provisions of the campaign finance law as of the date of the solicitation or receipt of such money or other thing of value. An organization functioning as a political committee is also subject to all limitations on contributions and expenditures, and all relevant reporting requirements, imposed by M.G.L. c. 55.

Therefore, in order to preserve the integrity of the transactions and ensure that the local associations do not function as political committees, MAR dues and PAC contributions that are submitted on a single check must be placed in a separate transmittal account established by each local MAR association wishing to accept such contributions, and then promptly allocated and dispensed to the local association or Mass RPAC’s existing transmittal account based on the members expressed intent. See AO-95-27. The PAC contributions deposited in the Mass RPAC’s transmittal account must then be distributed in a timely manner to the state and federal PACs as advised in AO-99-01. This means there would be sixteen local transmittal accounts delivering contributions to the federal and state PAC’s central transmittal account if each of the local associations chooses to adopt this method of invoicing.

Contributions to Mass RPAC received in this manner should be disclosed as received by the PAC on the date that the local association receives the member’s check. See M-98-06. The amount of the contribution to be reported by Mass RPAC is the gross amount of the state PAC’s share. As discussed below, Mass RPAC would report its portion of bank fees and administrative costs associated with the PAC solicitation and transmittal accounts as either an expenditure or in-kind contribution depending on whether the PAC reimburses the local association for such costs and support.

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<sup>2</sup> A “written instrument” is “a check on which the contributor is directly liable or which is written on a personal, escrow, trust, partnership, business or other account which represents or contains the contributor’s funds ... [or] for contributions by credit card, a paper record signed by the cardholder or, in the case of such contribution made over the Internet, an electronic record created and transmitted by the cardholder.” The term “written instrument” shall not mean a certified check, cashier’s check, treasurer’s check, registered check, money order, traveler’s check or other similar negotiable instrument.” See M.G.L. c. 55, § 9.

For an individual to make a PAC contribution by direct deposit, section 9A requires that the funds be transferred by wire or other electronic means into the PAC’s bank account. In addition, the contributor must provide the PAC with a copy of a signed card authorizing the contributor’s bank or other financial institution to complete the transaction. This card must include (1) the contributor’s name and residential address; (2) the amount, and payment period if applicable, of each contribution; (3) the contributor’s occupation and employer(s) if the contribution authorized exceeds \$200 or may exceed \$200 in a calendar year; and (4) a statement that the contributor’s authorization may be revoked at any time by written notice to the contributor’s bank or financial institution. See M.G.L. § 9A.

Mass RPAC must pay the fair market value for its share of administrative costs and services received from any association financed, in whole or part, by corporate funds, and it must pay for bank and other fees related to any local transmittal account administered by such an association in order to offset the receipt of an improper in-kind contribution. See M.G.L. c. 55, § 8. This is because associations may make political contributions to candidates, candidate committees, PACs and party committees only if the general treasury of the organization contains no funds derived from business and professional corporations. See AO-97-21, AO-95-24, and AO-91-31. In the case of local associations free of corporate financing, Mass RPAC may either pay for the costs directly, or, as suggested above, receive its share of the value of such costs and services not reimbursed as an in-kind contribution from the local associations subject to IB-88-01. See AO-99-01.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided solely on the basis of representations made in your letter and during conversations with OCPF staff. Because the proposed fundraising effort involves fundraising for a federal PAC, you may wish to contact the Federal Elections Commission for additional guidance.

This office appreciates your interest in the campaign finance law. Please contact us if you have further questions.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan", followed by a vertical line.

Michael J. Sullivan  
Director

MJS:bp